

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:LM:NR:HOU:1AUS:TL-N-7144-00
DHDelgado

date: **JUN 21 2001**

to: Director, LMSB Division, Natural Resources
Attn: Team Leader Ann Smith, Group 1393

Stop 4301 SANW

from: Large and Mid-Size Business Division Counsel
(Natural Resources) Austin, Texas

Stop 2000 AUS

subject: **Request for Review of Form 872, Consent to Extend the Statute**

As you know, on April 12, 2001, we forwarded our written advice to you for pre-review to our National Office. This advice was to follow up our memorandum of February 27, 2001, which responded to your request for our review of the proposed Form 872 in the above-referenced case for the [REDACTED] tax return filed by [REDACTED]. You will recall that the February 27, 2001, memorandum confirmed our agreement that you review documents and information to determine whether [REDACTED] properly filed a separate return for [REDACTED], as suggested by George Johnson of the Corporate Division of the Office of Chief Counsel. You informed the undersigned of your findings from the review of documents in your possession and those in the possession of the examiner of the [REDACTED] tax return of the related taxpayer, [REDACTED].

ISSUE

Who has authority to extend the statute of limitations for [REDACTED] for the tax year [REDACTED]? How should the consent to extend the statute of limitations be worded?

FACTS

The following is a summary of the facts in this case based on the documents you forwarded to the undersigned. (We forwarded the following summary to the National Office as part of the [REDACTED] memorandum for pre-review). Prior to [REDACTED] owned the refinery in [REDACTED]. [REDACTED] decided to spin off [REDACTED] refineries in [REDACTED]. On [REDACTED], [REDACTED] was incorporated in Delaware. On [REDACTED], [REDACTED], a subsidiary of [REDACTED]

[REDACTED], acquired [REDACTED] shares of common stock of [REDACTED] for \$[REDACTED]. On [REDACTED] through a series of transactions among [REDACTED] subsidiaries, the [REDACTED] shares of [REDACTED]'s stock previously owned by [REDACTED] were transferred to [REDACTED] in exchange for their stock. On [REDACTED], [REDACTED] and its subsidiaries executed a series of transactions whereby [REDACTED] contributed the [REDACTED] refinery assets in exchange for [REDACTED] shares of [REDACTED] stock. Prior to [REDACTED], [REDACTED] owned the [REDACTED] assets; [REDACTED] operations for [REDACTED] began on [REDACTED].

As of [REDACTED], [REDACTED] was the [REDACTED] percent shareholder of [REDACTED] as the result of the series of transactions that you believe are section 351 transactions. [REDACTED] sold all [REDACTED] shares of common stock in [REDACTED] in [REDACTED] to [REDACTED]. In [REDACTED] and its [REDACTED] subsidiary companies, including [REDACTED], did not elect to file a consolidated return. Rather, [REDACTED] and its [REDACTED] subsidiaries each filed separate returns. Once [REDACTED] purchased the stock of [REDACTED] from [REDACTED] in [REDACTED], it changed the name of [REDACTED] to [REDACTED]. [REDACTED] filed a consolidated return with its parent [REDACTED] beginning in [REDACTED]. In [REDACTED] Company changed its name to [REDACTED].

DISCUSSION

You believe the separate filing of [REDACTED] and its [REDACTED] subsidiaries in [REDACTED] was proper, as subsequent to the section 351 transactions in [REDACTED] they never filed a consolidated return together. As you know, all members of a consolidated return group must elect to file a consolidated return pursuant to section 1502. Without such an election, separate filing would be appropriate.*

*Once you presented the undersigned with the above facts, she consulted with George Johnson of the Corporate Division a second time (prior to [REDACTED]). [REDACTED] concurred that [REDACTED]'s separate filing in [REDACTED] was proper unless the series of transactions in [REDACTED] whereby [REDACTED] acquired the stock in [REDACTED]

On April 26, 2001, I received a message from Robert B. Taylor of the Procedure and Administration Division, stating that his division agreed with our suggested advice contained in the memorandum we forwarded for pre-review on April 12, 2001. We had recommended that:

1) You should revise the proposed consent (that you sent to us for review on January 29, 2001) to be executed by an officer of [REDACTED] to add "formerly known as" [REDACTED] in the title.

2) You should obtain a second consent to be executed by an officer of [REDACTED]. In this second consent, [REDACTED] should be identified as "successor in interest to [REDACTED], former shareholder of [REDACTED]."

Mr. Taylor also informed me that his reviewer suggested that George Johnson review our advice before National Office completed their pre-review of our above advice. On April 30, 2001, Mr. Johnson telephoned the undersigned. (b)(7)a [REDACTED]

(b)(7)a [REDACTED]

(b)(7)a [REDACTED] From the documents we attached to our April 12, 2001 memorandum to the National Office, Mr. Johnson could not confirm the filing status or ownership of [REDACTED] or [REDACTED]. Mr. Johnson then contacted you directly to obtain some of the additional information he needed.

(b)(7)a [REDACTED]

[REDACTED] were 1) a continuing downstream transfer as defined in Reg. § 1.1502-75(d)(2)(ii), or 2) a reverse acquisition as defined in Reg. § 1.1502-75(d)(3), or 3) an F reorganization as defined in I.R.C. § 368(a)(1)(F). After reading the April 12, 2001 memorandum with the attached documents, Mr. Johnson advised the undersigned that he was no longer concerned about the possibility of a reverse acquisition. You ruled out an F reorganization and a continuing downstream merger.

(b)(7)a

(b)(7)a

3) Assuming that the power-of-attorney for the [REDACTED] officers is valid, one of these [REDACTED] officers, as POA on behalf of the taxpayer, should sign a Form 872 extending the statute of limitations with regard to the taxpayer's [REDACTED] separate return year.

4) Assuming that the taxpayer should have been included on the [REDACTED] consolidated return filed by [REDACTED] and assuming also that the [REDACTED] consolidated group's [REDACTED] consolidated return year is not already extended, then [REDACTED], as agent for the taxpayer, should execute a Form 872 extending the statute of limitations with regard to the [REDACTED] group's consolidated return.

As Mr. Johnson informally advised you of his above recommendations, you prepared three consents that you forwarded to us on June 6, 2001, for review. On June 15, 2001, the undersigned forwarded copies of these three consents to Mr. Johnson. On June 18, 2001, Mr. Johnson advised the undersigned that you only need two consents--one if the taxpayer's separate filing was correct; another if the taxpayer's separate filing was not correct. We still do not have sufficient information to determine if the taxpayer's separate filing in [REDACTED] was correct. Mr. Johnson confirmed that the first of the three consents that you forwarded on June 6, 2001, is appropriate in the event the taxpayer's separate filing is correct (the consent to be executed by an officer of [REDACTED], formerly [REDACTED], formerly [REDACTED]). Mr. Johnson then stated that the third consent that you forwarded is not adequate to extend the statute in the event the separate filing was not correct. In that event, the statute should be extended for the consolidated return for the entire consolidated return group for [REDACTED]. The title in that consent would be the common parent, which Mr. Johnson assumed would be [REDACTED].

We checked to see if the statute for the consolidated return for [REDACTED] for the tax year [REDACTED] has already been extended. On June 19, 2001, the undersigned contacted [REDACTED], team coordinator for the audit of [REDACTED].

forwarded a copy of the consent that has been executed to extend the statute for [REDACTED], and its subsidiaries for the tax years [REDACTED] and [REDACTED], a copy of which is attached. [REDACTED], who may be reached at (713) 241-0876 also confirmed that [REDACTED] is the common parent for the only consolidated return group within the family of [REDACTED] companies. [REDACTED] is a subsidiary of [REDACTED]. While other [REDACTED] companies file "deconsolidated" returns, the only consolidated return group is [REDACTED] and its subsidiaries. [REDACTED] is owned [REDACTED] percent by a [REDACTED] entity and [REDACTED] percent by [REDACTED]. [REDACTED] no longer files an annual report; [REDACTED] reports on its international holdings.

CONCLUSION

There are only two consents that are necessary to extend the statute--one assuming that the separate return filing is correct; another assuming that the separate return filing is not correct. In the event that the taxpayer's separate filing in [REDACTED] is correct, the consent executed by an officer of [REDACTED], formerly [REDACTED], formerly [REDACTED], is sufficient. If the taxpayer should have been part of the [REDACTED] consolidated group in [REDACTED], the attached consent extends the statute for all members of the consolidated return group of [REDACTED] and its subsidiaries. Accordingly, it is not necessary to obtain another consent from [REDACTED].**

To double-check the correct filing status of the taxpayer for [REDACTED] and to ensure that the taxpayer was not part of another consolidated return group in [REDACTED], we recommend that the Service send [REDACTED] an IDR containing questions designed to elicit the [REDACTED] group's structure. We understand that Mr. Johnson has provided you with some suggested questions. You will probably want to coordinate this request with [REDACTED].

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

**In the event that you have obtained other consents while awaiting this final advice, we suggest that you retain them in the administrative file.

If you have any questions, please contact the undersigned at (512) 499-5901. Thank you.

MARION S. FRIEDMAN
Associate Area Counsel
(Large & Mid-Size Business)

/s/ DEBORAH H. DELGADO

By: _____
DEBORAH H. DELGADO
Attorney (LMSB)

Attachment:

Consent for [REDACTED]

cc: George Johnson, Room 4136, CC:CORP:B06 (w/ attachment)
Robert B. Taylor, Room 5136, CC:PA:APJP:B02 (w/ attachment)